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May 20, 2015

The Honorable James Inhofe  
Chairman  
Senate Environment and Public Works Committee  
United States Senate  
Washington, DC 20510

The Honorable Barbara Boxer  
Ranking Member  
Senate Environment and Public Works Committee  
United States Senate  
Washington, DC 20510

Dear Chairman Inhofe and Ranking Member Boxer:

The Attorneys General of West Virginia, Nebraska, Oklahoma, Wyoming, Alabama, Arizona, Arkansas, Montana, North Dakota, Ohio, South Carolina, and Wisconsin, and the Governors of Iowa and Mississippi, write to offer our strong support for the Federal Water Quality Protection Act ("Act"). S. 1140, 114th Cong. (2015). We urge the Senate Environment and Public Works Committee to move quickly to pass the Act, in order to ensure that the Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers (the "Corps") engage in a rulemaking consistent with the limits imposed by Congress. The Act's expeditious passage is essential to addressing the unlawful rule proposed by EPA and the Corps

on April 21, 2014, defining “waters of the United States” under the Clean Water Act (“CWA”). 79 Fed. Reg. 22,188 (Apr. 21, 2014) (“Proposed Rule”).

As you know, the CWA assigns to EPA and the Corps responsibility to protect interstate, navigable waters, while properly leaving primary authority for intrastate waters and lands to the States. Specifically, the CWA grants to EPA and the Corps limited authority to protect “navigable waters,” defined as “waters of the United States.” 33 U.S.C. §§ 1344, 1362(7). At the same time, the CWA expressly seeks to “recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources . . . .” 33 U.S.C. § 1251(b). The reason for this division of authority is clear: Congress understood that States are best positioned to design, implement, and enforce protections for intrastate waters and lands, consistent with local conditions and needs, while the Federal Government’s expertise and authority lies only in protecting interstate, navigable waters.

In the Proposed Rule, EPA and the Corps ignored the statutory division of authority between the States and the Federal Government. The Proposed Rule broadly sweeps in large swaths of intrastate waters and sometimes-wet lands into the Federal Government’s purview, without any lawful basis for doing so. Indeed, almost no intrastate water or sometimes-wet land falls outside the purported jurisdictional grasp of EPA and the Corps. This failure to respect the States’ primacy in intrastate water and land use management flows directly from the flawed process the agencies followed in developing the Proposed Rule. The agencies failed to consult adequately with the States, as required by Executive Order 13132: Federalism, the very purpose of which is to “to guarantee the division of governmental responsibilities between the national government and the States.”

In a letter submitted to the agencies on October 8, 2014, the States outlined the numerous legal infirmities with the Proposed Rule, which imposes duplicative regulations on farmers, developers, and homeowners. Letter from the Attorneys General of West Virginia, Nebraska, Oklahoma, Alabama, Alaska, Georgia, Kansas, Louisiana, North Dakota, South Carolina, and South Dakota (joined by Montana’s Attorney General in a separate comment letter) and the Governors Of Iowa, Kansas, Mississippi, Nebraska, North Carolina, and South Carolina, to Gina McCarthy, Adm’r, U.S. Evtl. Prot. Agency & John M. McHugh, Sec’y, U.S. Dep’t of the Army (Oct. 8, 2014). In that letter, the States urged EPA and the Corps to withdraw the Proposed Rule, and to replace that Rule with a much narrower alternative that respects the States’ constitutional and statutory authority, while also giving needed clarity to farmers, developers, and homeowners. Attorney General DeWine of Ohio sent a letter on November 13, 2014 also urging the agencies to replace the proposed rule. All public indications are that the agencies have ignored these letters and are pressing forward with finalizing the Proposed Rule.

The Federal Water Quality Protection Act addresses many of our concerns with the Proposed Rule. The Act requires EPA and the Corps to withdraw the illegal Proposed Rule, and to replace that Rule with a narrow, lawful alternative, which protects interstate, navigable waters, while preserving the States’ primary authority over local waters and lands. The Act also requires the agencies, in designing this new rule, to consult with State and local governments, so that the agencies can understand the water protection programs already in place at the State and local

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level. Such consultation will improve the quality of the final rule the agencies adopt, and will ensure proper respect for the States' statutory and constitutional rights and responsibilities.

We urge your Senate colleagues to support the Federal Water Quality Protection Act.

Sincerely,



Patrick Morrisey  
West Virginia Attorney General



Doug Peterson  
Nebraska Attorney General



E. Scott Pruitt  
Oklahoma Attorney General



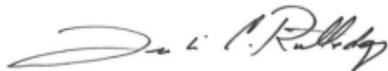
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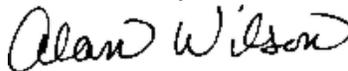
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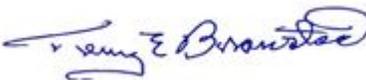
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